

October 26, 1999

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**DECISION ON APPEAL OF NOTICE OF KING COUNTY CODE VIOLATION**

SUBJECT: Department of Development and Environmental Services File No. **E9900354**

**BHAG SINGH KHELA**  
Appeal of Notice and Order

Location of Violation: 18500 140th Avenue SE/14033 SE 185 Place

Owner/Appellant:	Bhag Singh Khela, <i>represented by</i>	<b>Navin Naidu</b>
	10818 SE 236th	10407 SE 147th #316
	Kent, WA 98031	Renton, WA 98055
	Phone: (253) 852-7740	

King County:	Department of Development and Environmental Services
	Land Use Services Division, <i>represented by</i>
	<b>Fred White</b>
	900 Oakesdale Avenue SW, Renton, WA 98055
	Phone: (206) 296-6783 Fax: (206) 296-7055

**SUMMARY OF RECOMMENDATIONS:**

Department's Preliminary Recommendation:	Deny the appeal
Department's Final Recommendation:	Deny the appeal
Examiner's Decision:	Deny the appeal, subject to modification

**PRELIMINARY MATTERS:**

Notice of appeal received by Examiner:	June 21, 1999
Statement of appeal received by Examiner:	June 21, 1999

**EXAMINER PROCEEDINGS:**

Hearing Opened:	September 27, 1999
Hearing Closed:	September 27, 1999

Hearing Re-Opened for Administrative Purposes:  
Hearing Closed:

September 28, 1999  
October 22, 1999

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

#### ISSUES/TOPICS ADDRESSED:

- Penalties

#### SUMMARY:

Civil penalty assessed at the time of issuance of the notice of King County code violation is upheld, subject to modification by the Examiner.

**FINDINGS, CONCLUSIONS & DECISION:** Having reviewed the record in this matter, the Examiner now makes and enters the following:

#### FINDINGS:

1. On April 14, 1999, the King County Department of Development and Environmental Services, Code Enforcement Section, issued to Bhag Singh Khela a Notice of King County Code Violation: Civil Penalty Order : Abatement Order: Notice of Lien: Duty to Notify ("Notice and Order").  
The Notice and Order alleged violation of a previously approved grading permit, clearing or grading within a sensitive area without the required permits, and failure to provide adequate temporary or permanent erosion-sedimentation or drainage control measures.  
  
The Notice and Order assessed an initial civil penalty in the amount of \$900, and provided that additional civil penalties would be incurred if all violations were not corrected by May 15, 1999.  
  
On May 6, 1999, a Notice of Appeal was filed by Bhag Singh Khela with the Department of Development and Environmental Services.
2. The Appellant and King County entered into a voluntary compliance agreement, wherein the Appellant agreed to correct the violations, and King County agreed to transfer funds from a pre-existing Khela short plat application account to the account for the grading permit application required by the Notice and Order.  
  
According to the preponderance of the evidence, Mr. Khela has been cooperative in curing the violations. The \$900 penalty has been paid by the Appellant to King County, but the Appellant requests that reimbursement thereof be ordered in this proceeding.

3. The initial \$900 civil penalty was assessed by DDES pursuant to KCC 23.32.010. Five hundred dollars was assessed as the basic penalty; \$200 was assessed for a history of similar violations; and \$200 was assessed for economic benefit to the person responsible for the violation.
4. According to the evidence presented, the history of similar violations was the placement of fill on the subject property in 1990, without the property owner's knowledge or consent. Correction of that violation was negotiated between the Appellant and King County, resulting in an agreement that the fill would be removed or re-graded through the development of a short plat. For reasons beyond the Appellant's control, the short plat approval process could not be completed. The 1990 fill is the same material that is, in part, the subject of the present proceeding.
5. The economic benefit to the Appellant from the current violation was, in part, the avoidance of a sensitive areas variance application fee. In addition, had the grading project been completed without intervention by the Department, the Appellant would have been benefited by accomplishing the grading more expeditiously than could have been done if the proper permitting processes had been followed. Although ultimately no economic benefit accrued to the Appellant from the violation, the failure to realize economic benefit was due to the Department's enforcement proceedings.
6. King County has, in some recent code enforcement cases, taken the position that the assessment of civil penalties at the time of issuance of the Notice and Order is incorrect or inappropriate. As a consequence, civil penalties initially assessed have, in those instances, been waived by the Hearing Examiner.

In the present case, the Department asserts that imposition of the civil penalty at the time of issuance of the Notice and Order is required by Chapter 23.32 KCC, and waiver is strictly limited to the circumstances enumerated in KCC 23.32.050. None of the circumstances set forth in that section have been shown to be applicable to this proceeding.

#### CONCLUSIONS:

1. It was proper for the Department of Development and Environmental Services to assess the initial basic civil penalty set forth in the Notice and Order.
2. The enhanced penalty for a history of similar violations is inappropriate where the historic violation is the same violation as is currently addressed in this proceeding.
3. The assessment of an enhanced penalty for economic benefit to the person responsible for the violation is justified by the facts of this case.
4. The requirements for waiver of civil penalty set forth in KCC 23.32.050 are applicable to the Director of the Department of Development and Environmental Services. The jurisdiction of the King County Hearing Examiner is set forth in KCC 20.24.080.A.3. The authority of the

Examiner pursuant to that grant of jurisdiction is set forth in KCC 20.24.080.B. The Examiner's authority is stated more broadly than the authority of the Director of the Department to grant or withhold a waiver of penalties.

5. The evidence and argument presented by the Appellant does not persuade the Examiner that either the Director erred in failing to waive the initial civil penalty, or that any official law, policy or objective of King County requires or justifies a waiver or reduction by the Hearing Examiner of the basic initial penalty or the enhanced penalty for economic benefit.

#### DECISION:

The appeal of Bhag Singh Khela of the civil penalty imposed by the April 14, 1999 Notice and Order is DENIED, provided that the amount thereof shall be reduced by the \$200 attributable to history of similar violations. The said \$200 shall be reimbursed by the King County Department of Development and Environmental Services to the Appellant.

ORDERED this 26<sup>th</sup> day of October, 1999.

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James N. O'Connor  
King County Hearing Examiner

TRANSMITTED this 26<sup>th</sup> day of October, 1999, to the following parties and interested persons:

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Success Construction, Inc.  
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